

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRL.R.NO. 127 of 1995

DATE OF ORDER:5.9.2007

Ved Parkash

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE A.N. JINDAL

Present: Mr. V.K. Bali, Advocate, with
Ms. Anshu Bali, Advocate, for the petitioner.
Mr. S.S. Patter, Sr. D.A.G. Haryana.

A.N. JINDAL,J.

The petitioner was convicted under Sections 337,338 and 304-A IPC for causing death of three persons and injuries to four persons vide judgment dated 22.12.1993 passed by Judicial Magistrate, Ist Class, Fatehabad. The appeal was also dismissed.

The occurrence is stated to have taken place on 19.10.1989 at 4:00 a.m. Complainant Bhoop Singh along with Gharsi Ram, Ghisa Ram, Ram Singh, Banwari, Nopa Ram, Chhotu Ram, Bhal Singh, Kirpa Ram, Fakir Chand, Om Parkash, Diwan Chand, Lilu Ram, Gopal and Chhotu Ram was coming back to his village after attending the Sat Sang in a Peter Rehra(a cart fitted with a peter engine). When they reached near the village Bhuna, petitioner while driving a truck at a high speed in rash and negligent manner came from the opposite side and struck the same into the said Peter Rehra. Resultantly, Gharsi Ram and Ghisa Ram died at the spot whereas Pahlad Singh died in the hospital while four or five more persons sustained injuries. The case was registered on the next day of occurrence. Investigation was commenced which was altered into report under Section 173 Cr.P.C.

The petitioner was charged under Sections 279/337/338 and 304-A IPC, to which he pleaded not guilty and claimed trial.

In order to establish the charge against the petitioner, the prosecution examined 11 witnesses.

When examined under Section 313 Cr.P.C., the petitioner denied all the incriminating circumstances appearing against him and pleaded his false implication.

Ultimately, the trial ended in conviction. The appeal was also dismissed.

I have heard Mr. V.K. Balli, Advocate, for the petitioner, Mr. S.S. Patter, Sr. D.A.G for the State of Haryana and perused the records with their able assistance.

The pristine question raised by learned counsel for the petitioner is that the Peter Rehra in question was not an authorized vehicle, it had no head lights, parking lights or indicators, therefore, it could not be driven on the road by Om Parkash. It had no chasis number and route permit. It was temporarily vehicle prepared after affixing a engine over a cart. In the absence of indicators or head lights the petitioner had no opportunity or occasion to see the Rehra moving silently on the road. Therefore, instead of holding the petitioner as negligent, Om Parkash could be held negligent while driving such vehicle on the road and responsible for the accident.

Having heard learned counsel for the petitioner and on perusal of the record, I find merit in the revision petition. I find that this Peter Rehra was an unauthorized vehicle and had never been registered with the authority. Having no chesis number, route permit and registration number, it could not be driven on the road. Not only this, Om Parkash was carrying about 14 or 15 persons at the mid night. It is often seen that such carts' drivers drive the vehicle on the road without having the head lights in the absence of which, it is very difficult for on going vehicles to find out their movements. No such evidence has been led by the prosecution that Peter Rehra was having any head light or indicators affixed over it so as to indicate the on going vehicle about their existence on the road.

Further more, on bare perusal of the site plan, it transpires that Peter Rehra was coming back from Fatehabad to Village Nadhori; it is shown to have fallen on the wrong side of the road, which also proves the negligence of the driver of Peter Rehra. That apart, complainant Bhoop Singh identified the accused and handed over him to the police on the same day. But as per records, accused Ved Parkash was not arrested on the same

date i.e. 19.10.1989 and he is stated to be arrested on 20.10.1989. Inference could not be drawn that the accused was not apprehended at the spot. Further, the complainant, Bhoop Singh was not examined by the prosecution, therefore, the FIR registered at his instance could not be said to have been proved. Not only this, the Investigating Officer was also not examined. In his absence, the material documents, like site plan, recovery memo could not be proved. Prosecution has tried to prove the guilt of the petitioner by examining the photographer, in order to prove the photographs, but when he entered into the witness box as PW8, he stated that the photographs placed on record, had not been taken by him. Thus, the legal question with regard to the negligence stands not established by the prosecution against the petitioner.

Consequently, the interference with the impugned judgment at my end becomes inevitable.

For the forgoing reasons, I hereby accept the revision petition, set aside the impugned judgment, acquit the accused Ved Parkash of the charges framed against him and direct him to be set at liberty forthwith. The bail bonds and surety bonds stand discharged. The fine, if any deposited by him be refunded.

5.9.2007
rajeev

(A.N. JINDAL)
JUDGE

To be referred to reporter : Yes/no